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असाधारण

EXTRAORDINARY

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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 7-12-1998:—

BILL No. 149 OF 1998

A Bill to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Central Vigilance Commission Act, 1998.

Short title and
commencement.

(2) It shall be deemed to have come into force on the 25th day of August, 1998.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appointed day" means the date on which the Commission is constituted under sub-section (1) of section 3;

(b) "Central Vigilance Commissioner" means the Central Vigilance Commissioner appointed under sub-section (1) of section 4;

(c) "Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3;

(d) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

25 of 1946.

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub-section (1) of section 4.

CHAPTER II

CENTRAL VIGILANCE COMMISSION

Constitution of
Central
Vigilance
Commission.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon and to perform the functions assigned to it under this Act.

(2) The Commission shall consist of—

- | | | |
|--|---|--------------|
| (a) a Central Vigilance Commissioner | — | Chairperson; |
| (b) not more than four Vigilance Commissioners | — | Members. |

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) who have been or are in an all-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; and

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than three persons shall belong to the category of persons referred to either in clause (a) or in clause (b).

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The headquarters of the Commission shall be at New Delhi.

Appointment
of Central
Vigilance
Commissioner
and Vigilance
Commissioners.

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

- | | | |
|---|---|--------------|
| (a) the Prime Minister | — | Chairperson; |
| (b) the Minister of Home Affairs | — | Member; |
| (c) the Leader of the Opposition in the House of the People | — | Member. |

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

Terms and
other
conditions of
service of
Central
Vigilance
Commissioner.

5. (1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of three years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

(4) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(5) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) reappointment in the Commission;

(b) further employment to any office of profit under the Government of India or the Government of a State.

(7) The salary and allowances payable to and the other conditions of service of—

(a) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(b) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that the salary, allowances and pension payable to, and the other conditions of service of, the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

6. (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

Removal of
Central
Vigilance
Commissioner
and Vigilance
Commissioner.

(2) The President may suspend from office the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

7. The Central Government may by rules make provision with respect to the number of members of the staff of the Commission and their conditions of service.

Power to make
rules by
Central
Government
for staff.

CHAPTER III

FUNCTIONS AND POWERS OF THE CENTRAL VIGILANCE COMMISSION

Functions and
powers of
Central
Vigilance
Commission.

8. (1) The functions and powers of the Commission shall be to—

- (a) exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988; 49 of 1988.
- (b) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988; 49 of 1988.
- (c) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988; 49 of 1988
- (d) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988; 49 of 1988.
- (e) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988; 49 of 1988.
- (f) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;
- (g) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) The persons referred to in clause (c) of sub-section (1) are as follows:—

- (a) Group 'A' officers of the Central Government;
- (b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf.

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (c) of sub-section (1).

Proceedings of
Commission.

9. (1) The proceedings of the Commission shall be conducted at its headquarters.

(2) The Commission shall observe such rules of procedure in regard to the transaction of the business as may be provided by regulations.

(3) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the seniormost Vigilance Commissioner present at the meeting, shall preside at the meeting.

(4) No act or proceeding of the Commission shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

10. (1) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

Vigilance Commissioner to act as Central Vigilance Commissioner in certain circumstances.

(2) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

11. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

Power relating to inquiries.

5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

12. The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Proceedings before Commission to be judicial proceedings.

2 of 1974.

45 of 1860

CHAPTER IV

EXPENSES AND ANNUAL REPORT

13. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.

Expenses of Commission to be charged on the Consolidated Fund of India.

14. (1) It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission.

Annual report.

(2) The report referred to in sub-section (1) shall contain a separate part on the functioning of the Delhi Special Police Establishment insofar as it relates to sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946.

25 of 1946.

(3) On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

CHAPTER V

MISCELLANEOUS

15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

16. The Central Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Central Vigilance Commissioner, Vigilance Commissioner and staff to be public servants.

45 of 1860.

Report of any inquiry made on reference by Commission to be forwarded to that Commission.

17. (1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it may, for reasons to be recorded in writing, communicate the same to the Commission.

Power to call for information.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities.

Power to give directions.

19. The Commission shall from time to time give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:

25 of 1946.

Provided that the Commission shall not exercise its powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of a particular case only in a particular manner.

Power to make rules.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the number of members of the staff and their conditions of service under section 7;
- (b) any other power of the civil court to be prescribed under clause (f) of section 11; and
- (c) any other matter which is required to be, or may be, prescribed.

Power to make regulations.

21. (1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the duties and the powers of the secretary under sub-section (4) of section 3; and
- (b) the procedure to be followed by the Commission under sub-section (2) of section 9.

Notification, rule, etc., to be laid before Parliament.

22. Every notification issued under clause (b) of sub-section (2) of section 8 and every rule made by the Central Government and every regulation made by the Commission under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or regulation, or both Houses agree that the notification or the rule or regulation should not be made, the notification or the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

Power to remove difficulties.

23. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

24. With effect from the appointed day the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-AVD dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, insofar as its functions are not inconsistent with the provisions of this Act, continue to discharge the said functions and,—

Provisions relating to existing Vigilance Commission.

(a) all actions and decisions taken by the existing Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Act (hereafter referred to in this section as the new Commission) shall be deemed to have been taken by the new Commission;

(b) all proceedings pending before the existing Vigilance Commission, insofar as such proceedings relate to the functions of the new Commission, shall be deemed to be transferred to the new Commission and shall be dealt with in accordance with the provisions of this Act;

(c) the employees of the existing Vigilance Commission shall be deemed to have become the employees of the new Commission on the same terms and conditions;

(d) all the assets and liabilities of the existing Vigilance Commission shall be transferred to the new Commission.

46 of 1973.

25. Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1973 or any other law for the time being in force,—

Appointments, etc., of officers of Directorate of Enforcement.

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

- | | | |
|---|---|--------------|
| (i) the Central Vigilance Commissioner | — | Chairperson; |
| (ii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government | — | Member; |
| (iii) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government | — | Member; |
| (iv) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government | — | Member; |

(b) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement:

(c) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(d) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(e) the Committee referred to in clause (a) shall recommend officers for appointment to the posts of the level above the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(f) on receipt of the recommendation under clause (e), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation.

26. In the Delhi Special Police Establishment Act, 1946, with effect from the appointed day—

Amendment of Act 25 of 1946.

(a) after section 1, the following section shall be inserted, namely:—

“1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 1998, shall have the meanings, respectively, assigned to them in that Act.”;

Interpretation-section.

(b) for section 4, the following sections shall be substituted, namely:—

Superintendence
and
administration
of Special
Police
Establishment.

"4. (1) The superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission.

49 of 1988.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

Committee for
appointment of
Director.

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

- (a) the Central Vigilance Commissioner — Chairperson;
- (b) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;
- (c) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member.

(2) While making any recommendation under sub-section (1), the Committee shall consider the views of the Director.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951,

61 of 1951.

for being considered for appointment as the Director.

Terms and
conditions of
service of
Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

Appointment
for posts of
Joint Director
and above,
extension and
curtailment of
their tenure, etc.

4C. (1) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Joint Director and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation."

Repeal and
saving.

27. (1) The Central Vigilance Commission Ordinance, 1998, and the Central Vigilance Commission (Amendment) Ordinance, 1998 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Central Vigilance Commission Ordinance, 1998, as amended by the Central Vigilance Commission (Amendment) Ordinance, 1998, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Ord. 15 of
1998.

Ord. 18 of
1998.

Ord. 15 of
1998.

Ord. 18 of
1998.

THE SCHEDULE

[See section 5(3)]

Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:—

"I, A.B., having been appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do swear in the name of God

solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

STATEMENT OF OBJECTS AND REASONS

In pursuance to the recommendations of the Committee on Prevention of Corruption headed by Shri K. Santhanam, the erstwhile Central Vigilance Commission was set up *vide* Resolution No. 24/7/64-AVD dated the 11th February, 1964. The said Resolution *inter alia* provided that the Central Vigilance Commissioner would be attached to the Ministry of Home Affairs (now the Ministry of Personnel, Public Grievances and Pension), but in the exercise of its powers and functions it will not be subordinate to any Ministry/Department and will have the same measure of independence and autonomy as the Union Public Service Commission. Paragraph 3 of the said Resolution also stipulated that the Central Vigilance Commissioner will be appointed by the President by warrant under his hand and seal and that he will not be removed or suspended from the office except in the manner provided for the removal or suspension of the Chairman or a Member of the Union Public Service Commission. This Resolution was amended in November, 1995 deleting the provision relating to appointment of the Central Vigilance Commissioner by the President by warrant under his hand and seal.

2. In September, 1997, the Government constituted an Independent Review Committee (IRC) comprising Shri B.G. Deshmukh, Shri S.V. Giri and Shri N.N. Vohra to suggest measures for strengthening, *inter alia*, anti-corruption activities as part of its efforts against corruption. One of the recommendations made by the IRC was that the question of conferring statutory status to the Central Vigilance Commission (CVC) alongwith the restoration of the provision relating to appointment of the Central Vigilance Commissioner being made under the hand and seal of the President may be considered by the Government. The IRC also recommended that the Central Vigilance Commission should be made responsible for the efficient functioning of the CBI.

3. Subsequently, the Supreme Court *vide* its order dated 18th December, 1997 in Criminal Writ Petitions Nos. 340-343/93-Vineet Narain and others *versus* Union of India and others (generally known as Jain Hawala case) had *inter alia* given directions that statutory status should be conferred upon the Central Vigilance Commission. Several consequences of the conferment of such status were also directed by the Supreme Court to follow.

4. While the action on the formulation of the suitable legislation for the conferment of statutory status to the CVC was under way, the then Chief Vigilance Commissioner in position resigned and hence appointment to senior posts in Public Sector Undertakings, Nationalised Banks and Financial Institutions could not be finalised and made. Besides, matters relating to grant of sanction of prosecution of certain categories of public servants also remained pending in such a situation. In view of the urgency involved in the matter and keeping in mind the fact that the next Session of Parliament was likely to take place not earlier than November, 1998, the Government decided to put the proposed law in place through an Ordinance. Accordingly, the Central Vigilance Commission Ordinance, 1998 (Ord. 15 of 1998) was promulgated by the President on the 25th August, 1998.

5. Subsequent to the promulgation of the Ordinance on the 25th August, 1998, the amicus curiae in Writ Petition (Civil) No. 38/97 in the Supreme Court filed certain written objections objecting to certain provisions of the Ordinance. In order to rectify the position and after obtaining the views of the Attorney General for India, the President promulgated the Central Vigilance Commission (Amendment) Ordinance, 1998 (Ord. 18 of 1998) on the 27th October, 1998.

6. The Central Vigilance Commission Ordinance, 1998 as amended by the Central Vigilance Commission (Amendment) Ordinance, 1998, *inter alia*, provides—

- (i) for the constitution of a Central Vigilance Commission consisting of a Central Vigilance Commissioner as Chairperson and not more than four Vigilance Commissioners as Members;

(ii) that the Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) who have been or are in an all-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration;

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations;

subject to the condition that from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than three persons shall belong to the categories of persons referred to either in clause (a) or clause (b) above;

(iii) that the Central Vigilance Commissioner and Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal and their appointment shall be made after obtaining the recommendations of a Committee consisting of the Prime Minister as Chairperson, the Minister of Home Affairs and the Leader of the Opposition in the House of the People as Members;

(iv) that the term of the Central Vigilance Commissioner shall be for a period of four years from the date on which he enters upon his office or till he attains the age of 65 years whichever is earlier;

(v) that the term of a Vigilance Commissioner shall be for a period of three years from the date on which he enters upon his office or till he attains the age of 65 years whichever is earlier; and

(vi) that on ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for reappointment in the Commission and further employment to any office of profit under the Government of India or the Government of a State.

7. The Bill seeks to replace the said Ordinances.

NEW DELHI;
The 24th November, 1998.

KADAMBUR M.R. JANARTHANAN.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA**

[Copy of letter No. 371/54/98-AVD. III dated 27 November, 1998 from Shri Kadambur M.R. Janarthanan, Minister of State in the Ministry of Personnel, Public Grievances and Pensions to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the Central Vigilance Commission Bill, 1998 recommends the introduction and consideration of the Bill in Lok Sabha under article 117(1) and (3) of the Constitution.

FINANCIAL MEMORANDUM

1. Sub-clause (4) of clause 3 of the Bill provides for appointment of a Secretary to the Commission on such terms and conditions as the Central Government deems fit. Sub-clause (7) of clause 5 of the Bill provides for salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner and the Vigilance Commissioners. Clause 7 of the Bill provides for appointment of members of the staff of the Commission and their conditions of service.

2. For the Central Vigilance Commission the Budget provision for the year 1998-99 is rupees four crores and forty-four lakhs. The Budget Estimates projected for the year 1999-2000 are rupees four crores forty-three lakhs and thirteen thousand.

3. After the proposed Bill becomes an Act, there would apparently be increase in the expenditure since four Members, apart from the Chairpersons are proposed to be appointed in the Central Vigilance Commission. In addition, their personal staff, etc., will also be appointed.

4. Recurring expenditure towards pay and allowances, etc., of the Central Vigilance Commissioner and Vigilance Commissioners under sub-clause (7) of clause 5 and of Secretary under sub-clause (4) of clause 3 and the staff of the Commission under clause 7 are estimated approximately rupees fifty lakhs per annum. Rough estimates of non-recurring expenditure on items such as furniture, office equipment, vehicle, etc, would be approximately of the order of rupees fifteen lakhs. At this stage, it is not possible to give precise details of the expenditure to be incurred.

5. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Paragraph (b) of sub-clause (2) of clause 8 of the Bill empowers the Central Government to specify, by notification in the Official Gazette, the level of officers of corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government.

Clause 20 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, for the purpose of carrying into effect the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been enumerated in detail under various items of sub-clause (2) of that clause. These relate mainly to the number of members of the staff and their conditions of service under clause 7, any additional power of a civil court to be prescribed under sub-clause (f) of clause 11; and any other matter which is required to be, or may be, prescribed.

Clause 21 of the Bill also empowers the Central Vigilance Commission, with the previous approval of the Central Government, to make regulations, by notification in the Official Gazette not inconsistent with the proposed enactment and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of the proposed enactment. The various matters in relation to which such regulations may be made have been enumerated in detail under various items of sub-clause (2) of that clause. These relate mainly to the duties and powers of the Secretary under sub-clause (4) of clause 3; and the procedure to be followed by the Commission under sub-clause (2) of clause 9.

Every notification issued under clause 8(2)(b) or rule made by the Central Government under clause 20 or every regulation made by the Central Vigilance Commission under clause 21 is required to be laid before Parliament. The matters in respect of which notification may be issued or rules or regulations may be made are generally matters of procedure or administrative details or matters in respect of which it is not practicable to make detailed provisions in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Central Vigilance Commission Ordinance, 1998 and the Central Vigilance Commission (Amendment) Ordinance, 1998.

The Central Vigilance Commission Bill, 1998 which seeks to repeal and replace the Central Vigilance Commission Ordinance, 1998 and the Central Vigilance Commission (Amendment) Ordinance, 1998 proposes to make the following modification in the provisions contained in the said Ordinances:—

Clause 22 of the Bill *inter-alia* provides that every notification issued shall be laid before Parliament. Since only notifications which involve delegation of legislative character are required to be laid before Parliament and only notification issued under clause 8(2)(b) of the Bill is of legislative character the requirement as to laying is necessary only with respect to this clause. Accordingly it is proposed to modify clause 22. The said modification is of drafting nature.

BILL NO. 148 OF 1998

A Bill further to amend the Coffee Act, 1942.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

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| | 1. (1) This Act may be called the Coffee (Amendment) Act, 1998. | Short title and commencement. |
| | (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. | |
| 7 of 1942. | 2. In the Coffee Act, 1942 (hereinafter referred to as the principal Act), in section 3, clauses (h) and (m) shall be omitted. | Amendment of section 3. |
| | 3. In section 9 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— | Amendment of section 9. |
| | “(1) The Central Government shall appoint a Secretary to the Board and may appoint a Deputy Secretary to the Board, to exercise such powers and to perform such duties under the direction of the Board as may be prescribed.”. | |
| | 4. In section 10 of the principal Act, for the portion beginning with the words “except money in the pool fund” and ending with the words “had it continued to exist”, the words “shall be disposed of in such manner as the Central Government may direct” shall be substituted. | Amendment of section 10. |

Amendment of section 11.	5. In section 11 of the principal Act, for the words "fifty rupees", the words "two hundred rupees" shall be substituted.
Omission of sections 17, 18 and 22.	6. Sections 17, 18 and 22 of the principal Act shall be omitted.
Amendment of section 23.	7. In section 23 of the principal Act, sub-section (2) shall be omitted.
Omission of sections 24 and 25.	8. Sections 24 and 25 of the principal Act shall be omitted.
Substitution of new section for section 26.	9. For section 26 of the principal Act, the following section shall be substituted, namely:— "26. (1) The Board shall purchase coffee from the Indian market whenever the Central Government so directs. (2) The Board shall sell or dispose of the coffee so purchased in such manner as the Central Government may direct."
Sales of coffee by the Board.	
Amendment of section 29.	10. In section 29 of the principal Act,— (i) for sub-section (1), the following sub-section shall be substituted, namely:— "(1) A curing establishment when receiving coffee from any estate for curing shall report to the Board the particulars of the registered owner of such estate and the amount of coffee so received." (ii) for sub-section (4), the following sub-section shall be substituted, namely:— "(4) Every— (a) agent appointed by the Board to cure coffee shall maintain accounts in such forms as may be required by the Board; and (b) curing establishment shall maintain the records of quantity of coffee received and processed."
Substitution of new section for section 30.	11. For section 30 of the principal Act, the following section shall be substituted, namely:— "30. The Board shall, on and from the commencement of the Coffee (Amendment) Act, 1998, maintain a general fund and the unexpended balance of all money in the pool fund maintained by the Board immediately before such commencement shall, after settlement of liabilities, be merged in the general fund: Provided that any liability against such pool fund that may arise in future shall be met out of the general fund."
General fund to be maintained by the Board.	
Amendment of section 31.	12. In section 31 of the principal Act, in sub-section (1), clause (b) shall be omitted.
Omission of section 32.	13. Section 32 of the principal Act shall be omitted.
Substitution of new section for section 33.	14. For section 33 of the principal Act, the following section shall be substituted, namely:— "33. The Board may, subject to any prescribed conditions, borrow on the security of the general fund for any purposes for which it is authorised to expend money from such fund."
Power to borrow.	
Omission of section 34.	15. Section 34 of the principal Act shall be omitted.

16. In section 35 of the principal Act, for the words "one thousand rupees" and "five hundred rupees", the words "ten thousand rupees" and "one thousand rupees" shall respectively be substituted. Amendment of section 35.
17. In section 36 of the principal Act,— Amendment of section 36.
 - (i) in sub-section (1),—
 - (a) the words and figures ",or section 17 or section 18", shall be omitted;
 - (b) for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;
 - (ii) sub-section (2) shall be omitted.
18. In section 37 of the principal Act, for the words "five hundred rupees", the words "five thousand rupees" shall be substituted. Amendment of section 37.
19. In section 37A of the principal Act, for the words "one thousand rupees", the words "five thousand rupees" shall be substituted. Amendment of section 37A.
20. In section 38 of the principal Act, for the words "one thousand rupees", the words "five thousand rupees" shall be substituted. Amendment of section 38.
21. Sections 38A and 38B of the principal Act shall be omitted. Omission of sections 38A and 38B.
22. In section 39 of the principal Act, for the words "one thousand rupees", the words "five thousand rupees" shall be substituted. Amendment of section 39.
23. In section 43 of the principal Act, in sub-section (2), for the words "five rupees", the words "five hundred rupees" shall be substituted. Amendment of section 43.
24. Section 47 of the principal Act shall be omitted. Omission of section 47.
25. In section 48 of the principal Act, in sub-section (2),— Amendment of section 48.
 - (i) in clauses (x) and (xii), for the word "funds", wherever it occurs, the word "fund" shall be substituted;
 - (ii) clause (xviii) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

One of the objectives of the Coffee Act, 1942 has been to operate a Coffee Pool System under which all the growers shall compulsorily pool their produce to a common coffee pool. Coffee so pooled is to be marketed by the Coffee Board and the proceeds distributed to the growers after deducting pool expenses. From the beginning of this decade, there has been persistent demand from growers that the pooling requirement should be scaled down or abolished and that the growers be allowed direct access to the market. Accordingly, for the first time during the Coffee Season 1992-93, an Internal Sale Quota of thirty per cent. of the total produce was permitted to be retained by the growers for sale in the internal market.

2. In January, 1994, the Coffee Act, 1942 was amended to provide for a Free Sale Quota by which the growers were required to pool fifty per cent. of the total coffee produced. The remaining fifty per cent. could be marketed by the growers in either internal or international market according to their choice. The pooling requirement was further reduced in April, 1995 and Government allowed hundred per cent. Free Sale Quota to all the farmers owning plantations having area of ten hectares or less. The growers, owning plantation area exceeding ten hectares, were required to pool thirty per cent. of their coffee with the Coffee Board.

3. After going into all aspects of the pooling policy and noting the enhanced capability of the growers to market their own coffee without the Government intervention, the Government decided in September, 1996 to abolish the pooling system altogether. Keeping the Coffee Policy, 1996 in view, the Government has decided to effect necessary changes in the Coffee Act, 1942 by deleting certain provisions which govern the pooling of coffee with immediate effect. The Government also decided to avail of the opportunity for rationalisation of penalties for violation of the various obligatory provisions of the Act, and enhancement of ceiling of duty of customs on coffee. The money thus raised will, *inter alia*, be utilised for undertaking further research, development and extension activities by the Coffee Board so that the objectives of reaching the target of coffee production of three lakh tonnes by the end of this century can be attained. The Coffee Year starts from 1st of July and ends on 30th of June following, but arrival of coffee begins from October. Therefore, hundred per cent. Free Sale Quota system which had been announced in September, 1996 needs to be formalised so that the growers and exporters were able to plan their activities in time. The Coffee (Amendment) Bill, 1997 was, therefore, introduced in Lok Sabha, which was referred to the Department Related Parliamentary Standing Committee on Commerce. On the dissolution of the Eleventh Lok Sabha the Bill lapsed.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 13th November, 1998.

RAMAKRISHNA HEGDE

S. GOPALAN,
Secretary-General.